

## **APPENDIX C-1. STATE HISTORIC PRESERVATION OFFICER MEMORANDUM OF AGREEMENT**

### **MEMORANDUM OF AGREEMENT PURSUANT TO 36 CFR § 800.4(b)(2) and 800.6(b)(1)(iv)**

WHEREAS, the Tennessee Valley Authority (TVA) has proposed to implement a Tellico Reservoir Land Management plan for TVA land holdings along the Tellico Reservoir in Blount, Loudon, and Monroe Counties; and

WHEREAS, TVA has determined that the implementation of the Tellico Reservoir Land Management plan will have an effect upon historic properties that are eligible for listing in the National Register of Historic Places (NRHP), as well as other historic properties that are potentially eligible for inclusion in the NRHP, and has consulted with the Tennessee State Historic Preservation Officer (SHPO), the Eastern Band of Cherokee Indians, the United Keetoowah Band, the Cherokee Nation of Oklahoma, the Tennessee Commission of Indian Affairs, the Muscogee (Creek) Nation of Oklahoma, and the Poarch Band of Creek Indians pursuant to 36 CFR § 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f). and

WHEREAS, TVA has conducted archaeological investigations along lands considered in the Tellico Reservoir Land Management plan; and

WHEREAS, all consulting parties will be invited to concur in this Memorandum of Agreement; and

WHEREAS, the Final Environmental Impact Statement for the Tellico Reservoir Land Management plan, is made a part of this agreement by reference as "Appendix A." Appendix A will include a clearly delineated map of the APE for the Tellico Reservoir Land Management plan; and

NOW THEREFORE, TVA and the Tennessee SHPO agree that the undertaking shall be implemented in accordance with the following stipulations. TVA Senior Archaeologist, Cultural Resources, or the designee thereof, shall act for TVA in all matters concerning the administration of this agreement.

#### **Stipulations**

TVA will ensure that the measures outlined below relating to identification, evaluation, and treatment of historic properties are carried out within the above-referenced APE prior to the commencement of any ground-disturbing activities. In addition, adjoining landowners with a demonstrated interest in a specific ground-disturbing activity due to the nature of their legal or economic relation to a particular undertaking will be invited to be consulting parties pursuant to 36 CFR § 800(c)(6). This agreement allows phased identification, evaluation, and treatment of the historic properties located within the APE. TVA will ensure the stipulations in this document are carried out in consultation with the SHPO and signatory consulting parties.

#### **1. IDENTIFICATION:**

TVA shall conduct a survey to identify all previously unrecorded historic properties within the APE as defined in Appendix A of the Tellico Reservoir Land Management plan. The survey must be carried out in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23) and the Tennessee SHPO Standards and Guidelines for Architectural and Archaeological Resource Management Studies. This survey shall be conducted in consultation with the SHPO and signatory consulting parties, and a written report of the survey shall be submitted to the SHPO for review and comments.

**2. EVALUATION:**

TVA shall, in consultation with the SHPO and signatory consulting parties, evaluate the historic significance of properties identified through the survey in accordance with 36 CFR § 800.4(c). For properties that have been determined to be potentially eligible for the NRHP, TVA shall subject these properties to Phase II site evaluation in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23) and the Tennessee SHPO Standards and Guidelines for Architectural and Archaeological Resource Management Studies. The SHPO and signatory consulting parties shall review and comment on the scope of work (SOW) prior to the implementation of the survey. This evaluation shall be conducted in consultation with the SHPO and signatory consulting parties, and a written report of the survey shall be submitted to the SHPO for review and comments.

**3. TREATMENT PLAN:**

**a. AVOIDANCE, PROTECTION, AND MAINTENANCE:**

TVA, in consultation with the SHPO and signatory consulting parties, shall ensure that historic properties determined eligible for listing in the National Register of Historic Places shall be avoided whenever prudent and feasible by any activities that could affect the characteristics of a site that qualify it for listing in the NRHP. In the implementation of the Tellico Reservoir Land Management plan, alternatives to avoid adversely affecting historic properties eligible for the NRHP will be considered. All historic properties, subsequently discovered or identified and determined eligible by the evaluation process under Stipulation 2, that are avoided will be protected by a buffer zone established by consultation with the SHPO and signatory consulting parties. Furthermore, TVA will develop a protection and maintenance plan for historic properties within the timetable under Stipulation 6.b. this plan will comply with the recommended approaches to rehabilitation set forth in the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (U.S. Department of the Interior, National Park Service, 1983). This plan will be developed in consultation with the SHPO. TVA will seek and consider the views of all signatories to this agreement and other interested parties.

**b. DATA RECOVERY:**

When historic properties eligible for the National Register only under Criterion (d), as defined in 36 CFR § 60.4, will be adversely affected by unavoidable physical destruction or damage and all avenues of avoidance have been considered, data recovery will be implemented. In such an instance, TVA shall develop a treatment plan in consultation with the SHPO and signatory consulting parties for the recovery of historic and archaeological data from sites that are determined to be eligible for inclusion in the NRHP. Because of the unique or nearly unique nature of each archaeological site, requirements for mitigation will be determined through a process of consultation with the SHPO. TVA shall ensure that a data recovery plan is developed in consultation with the SHPO and signatory consulting parties to resolve adverse effects through recovery of significant information from historic properties.

The data recovery plan (a site specific research design and implementing SOW) shall be developed in accordance with 36 CFR §§ 800.5 and 800.6 and will be consistent with the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23). Furthermore, to the best of TVA's knowledge and belief, no human remains, associated or unassociated funerary objects, sacred objects, or objects of cultural patrimony as defined in 25 U.S.C 3001, the Native American Graves Protection and Repatriation Act (NAGPRA), are expected to be encountered in the archaeological investigations. However, should human remains be encountered the treatment of such remains will be carried out in accordance with Stipulation 5 of this agreement. A written report of the excavation shall be submitted to the SHPO for review and comments. The data recovery plan shall specify, at a minimum:

1. the property, properties, or portions of properties where data recovery is to be carried out;

2. any property, properties, or portions of properties that will be destroyed without data recovery;
3. the research questions to be addressed through the data recovery, with an explanation of their relevance and importance;
4. the field and laboratory methods to be used, with an explanation of their relevance to the research questions;
5. the methods to be used in analysis, data management, and dissemination of data, including a schedule;
6. the proposed disposition of recovered materials and records. The proposed location of this material will be at the University of Tennessee, Knoxville McClung Museum except for items specified under Stipulation 5 below;
7. proposed methods for involving the interested public in the data recovery;
8. proposed methods for disseminating results of the work to the interested public;
9. a proposed schedule for the submission of progress reports to the SHPO; and
10. a plan delineating the manner in which historic properties, human remains, and associated funerary objects discovered subsequent to the ratification of this agreement document would be treated.

The TVA shall provide the SHPO and signatory consulting parties an opportunity to monitor the implementation of the data recovery plan.

#### 4. REPORTS:

TVA shall ensure that all historical and archaeological investigations undertaken for compliance with this agreement are recorded in formal written reports that meet the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23) and the Tennessee SHPO Standards and Guidelines for Architectural and Archaeological Resource Management Studies. The SHPO shall be afforded thirty (30) days to review and comment on any archaeological or historical reports submitted as compliance with this agreement.

#### 5. TREATMENT OF HUMAN REMAINS:

TVA shall ensure that the treatment of any human remains discovered within the project area complies with all Federal and State laws concerning archaeological sites and treatment of human remains. Should human remains be encountered during historic properties investigations or post-review discovery, all ground disturbing activities in the vicinity of the human remains will be ceased immediately. Should human remains be encountered, within forty-eight (48) hours TVA will notify signatory consulting parties and invite them to comment. TVA shall ensure that the appropriate consultations are conducted pursuant to 36 CFR §§ 800.5 and 800.6.

Furthermore, TVA, after consultation with signatory consulting parties in accordance with the provisions of NAGPRA, shall ensure that any Native American human remains and associated funerary objects excavated during the survey, evaluation, or data recovery of historic properties will be reburied within sixty (60) days of completion of any investigations specified in the research design. The curation of the human remains and associated funerary objects will be at the University of Tennessee, Knoxville McClung Museum during this interim.

**6. TIMETABLES FOR COMPLIANCE:**

a. Consistent with Stipulation 7 that allows phased compliance, TVA shall ensure that the commitments in this agreement are met prior to commencement of any ground-disturbing activities. In the event that previously unidentified historic properties should be encountered during the implementation of any ground-disturbing activities, consultation with the SHPO and signatory consulting parties will be conducted to determine where work can resume while the effects to the historic property are addressed.

b. TVA will develop a protection and maintenance plan for historic properties within two (2) years of the acceptance of this agreement.

c. The SHPO and signatory consulting parties shall have thirty (30) days to review and comment on all archaeological reports of investigation and proposed data recovery plans.

**7. PHASED COMPLIANCE:**

Consistent with 36 CFR § 800.4(b)(2), this agreement allows phased identification, evaluation, and treatment of archaeological sites in order to meet the requirements of Section 106 of the National Historic Preservation Act (NHPA).

**8. LAND TRANSFER OF PROPERTY RIGHTS:**

Prior to the transfer, lease or sale, of any parcel to a third party, TVA will ensure that all requirements of Section 106 of the NHPA and its implementing regulation (36 CFR § 800) have been met including Stipulations 1 - 8 of this agreement. The instrument of conveyance shall contain, when necessary to protect historic properties, a legally binding preservation covenant for the protection of such properties prepared in consultation with the SHPO and signatory consulting parties. TVA may release the grantee from the preservation covenant in whole or in part, as appropriate, pursuant to the terms of the covenant and after consultation with the SHPO and signatory consulting parties.

**9. ADMINISTRATIVE CONDITIONS:**

a. If Stipulations 1 - 8 have not been implemented within ten (10) years, this agreement shall be considered null and void, unless the signatories have agreed in writing as provided in Paragraph 9.b. below to an extension for carrying out its terms. If no agreement is reached on an extension at the end of this 10-year period, TVA and the SHPO will resume consultation pursuant to 36 CFR § 800.

b. If Stipulations 1 - 8 have not been implemented within nine (9) years from the date of this agreement's execution TVA and the SHPO shall review the agreement to determine whether the agreement should be extended. If an extension is deemed necessary, TVA and the SHPO will consult in accordance with 36 CFR § 800.6(c) to make appropriate revisions to the agreement.

c. The signatories to this agreement may agree to amend the terms of the agreement. Such amendment shall be effective upon the signatures of all signatory parties to this agreement, which shall be appended to the agreement as an attachment.

d. Should the SHPO object within thirty (30) days after receipt of any plans, specifications, contracts, or other documents provided for review pursuant to this agreement, TVA shall consult with the SHPO to resolve the objection. If TVA determines that the objection cannot be resolved, TVA shall request the further comments of the Advisory Council of Historic Preservation (Council) pursuant to 36 CFR § 800. Any Advisory Council comment provided in response to such a request will be taken into account by TVA in accordance with 36 CFR § 800 with reference only to the subject of the dispute; TVA's responsibility to carry out all actions under this agreement that are not the subjects of the dispute will remain unchanged.

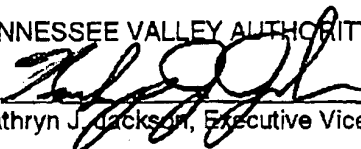
e. If any signatory determines that the terms of the agreement cannot be carried out, TVA and the SHPO shall consult to seek an amendment to the agreement. If the agreement is not amended, any signatory may terminate the agreement within thirty (30) days. TVA shall either execute a new agreement with the signatories pursuant to 36 CFR § 800.6(c)(1) or request the comments of the Council pursuant to 36 CFR § 800.7(a). If comments are requested of the Council, the Chairman of the TVA Board of Directors shall take into account the Council's comments on reaching a final decision regarding the Tellico Reservoir Land Management plan. The Chairman shall document this decision in a manner consistent with 36 CFR § 800.7(c)(4) of the Council's regulations.

f. TVA shall ensure that public involvement is conducted pursuant to 36 CFR § 800.6(a)(4) by inviting comment through Public meetings, Public notices, or other appropriate mechanisms as may be agreed upon by the signatories.

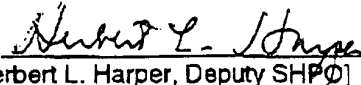
Execution and implementation of this Memorandum of Agreement, its filing with the Council, and its subsequent implementation evidence that TVA has afforded the Council an opportunity to comment on the Tellico Land Management plan, and its effects on historic properties, and that TVA has taken into account the effects of the Tellico Land Management plan on historic properties, and TVA has complied with its obligations under section 106 of NHPA.

**SIGNATORIES:**

TENNESSEE VALLEY AUTHORITY

By:  Date: 6/23/00  
[Kathryn J. Jackson, Executive Vice President, RSO&E]

THE TENNESSEE STATE HISTORIC PRESERVATION OFFICER

By:  Date: 6/27/00  
[Herbert L. Harper, Deputy SHPO]

THE EASTERN BAND OF CHEROKEE INDIANS

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[James E. Bird, Tribal Historic Preservation Officer]

By: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

**CONCURRING PARTIES:**

By: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_